CONTINUE TO budget meeting
LAFAYETTE CITY COUNCIL
CITY CLERK J Kalchin 9-24-07
DATE

City of Lafayette Staff Report

For:	Lafayette City Council
By:	Steven Falk, Lafayette City Manager
Date Written:	September 14, 2007
Meeting Date:	September 24, 2007
Subject:	**Regional Radio System**

Introduction

The San Francisco Bay Area is no stranger to disasters, and the need for a coordinated communications system is critical to the successful response to any type of disaster that could occur. We have seen the breakdowns that occur when communications systems fail, including those failures associated with the September 11th and Hurricane Katrina disasters. Given this, on April 9th 2007, the Lafayette City Council unanimously adopted Resolution 2007-15 signaling its intention to participate in a regional radio system and authorizing a $100 per radio "good faith" deposit.

Since that time, the radio and governance systems have been refined. Attached to this staff report is a resolution that would have the Lafayette City Council approve a joint powers agreement, establishing the East Bay Regional Communications System Authority. Staff also recommends that the Council establish a sinking fund to accumulate the estimated $300,000 required for Lafayette's participation.

Background

The counties of Alameda and Contra Costa face many of the same challenges as other metropolitan areas that use communications systems that have accumulated over time, and thus utilize different spectrum and proprietary technologies. The disparity of these systems often makes it difficult for jurisdictions to communicate with each other, in many cases impossible without inefficient and complicated technology patches. The situation is compounded by the fact that most of the systems in use today are nearing the end of the useful lives and need replacing.

The two counties have been working together over the last 3 years as part of a federally sponsored Urban Area Security Initiative (UASI) to establish priorities for homeland security funding, and a group of technical advisors from the Interoperable Communications Technical Assistance Program (ICTAP) has worked to evaluate the status of our communications systems and develop different alternatives. It is clear from the work of the ICTAP that the most cost effective and technically superior solution for both counties is to construct a shared two county regional communications

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system. Interoperability and funding the build out of a two county communications system has become the highest priority for the UASI.

Committees with representatives from both counties spent two years developing the technical parameters for the system, establishing a governance model, and obtaining political support from the jurisdictions within the two counties.

System Design

Design for the new system has been completed, and it will cover both counties from 31 sites strategically located throughout the region with an estimated infrastructure cost of around $60 million. The system will be a "Project 25" compliant system, thus providing interoperable communications between all the agencies that subscribe to the system. Federal Homeland security funding has been allocated over the past three years to begin to build out the system. Significant progress has also been made towards completing a digital microwave system linking sites in both counties, purchase of the master site controller which will operate the system, and purchase of equipment to build out 10 of the proposed sites. We continue to work to secure federal grants to support the build out of the infrastructure and are very optimistic that we will continue to receive support in the future.

System Governance

In order to manage the system, a governance model has been created that will manage the overall system implementation and operations while providing all users a voice in the management of the system. There are several working models throughout the United States where large regional areas have formed regional communication systems, with shared governance. As currently proposed, the East Bay Regional Communications System (EBRCS) joint powers authority will consist of a board of directors of 23 members as listed below:

(2) Alameda/Contra Costa County Police Chiefs Assn. (1 to be selected by each Association)

(2) Alameda/Contra Costa County Fire Chiefs Assn. (1 to be selected by each Association)

(1) Special District (to be selected by the Association)

(1) Alameda County, County Administrator

(1) Contra Costa County, County Administrator

(1) Alameda County Sheriff

(1) Contra Costa County Sheriff

(3) Contra Costa County City Managers (to be selected by the Association)

(3) Alameda County City Managers (to be selected by the Association)

(3) Contra Costa County Elected Officials (to be selected by the Mayor's Conference)

(3) Alameda County Elected Officials (to be selected by the Mayor's Conference)

(1) Alameda County Board of Supervisors

(1) Contra Costa County Board of Supervisors

The Board will oversee the financial, technical, and operations of the two county communications system. The Board will appoint technical and operational committees as necessary to workout system implementation issues.

Financial Impacts

There are three components of cost that must be considered in order to participate in the system. The build out of the infrastructure is expected to cost in the neighborhood of $60 million and, currently, grant funds have been used for this purpose. While grant funding has been available it is not expected to cover the entire cost of the system. It is expected that participating local jurisdictions will pay a proportionate share of the remaining build out costs, though those exact costs are not yet known. The second component is the cost associated with purchasing new radios to use on the new system. Each jurisdiction will be responsible for the radios they plan to use on the system. Every effort will be made to use the purchasing power of the EBRCS to obtain the lowest possible price for the radios. Lastly there will be a cost associated with the maintenance, technological upgrades and system reserve for the replacement of the system.

It has been agreed that the fairest way to allocate costs to each jurisdiction based on a proportional share of the radios that each jurisdiction uses on the system. Each jurisdiction will be responsible for a proportionate share of the infrastructure costs and an ongoing subscriber fee will be charged for each radio used on the system. Subscriber pricing will be determined by the Board of Directors, and adjusted as necessary as new users come on to the system. It is also anticipated that once the system is operational there will be opportunities to increase revenue by attracting new users.

Given the variety of funding unknowns (i.e., Federal or State funding, or lack thereof; total buildout cost; cost per radio; pro-rata share), it is difficult to estimate with precision what Lafayette's total up front and ongoing annual cost will be to participate in the system. However, based on conversations with other jurisdictions and the regional radio coordinators, staff believes that Lafayette's up front investment will be, perhaps, $300,000. While this is expensive, many jurisdictions are facing initial costs of several million dollars and will be required to issue debt to cover those costs. Rather than issue debt, staff instead recommends that the Lafayette City Council establish a sinking fund for the purpose of accumulating funds for this purpose, and add $100,000 to the fund annually. This will provide $300,000 within the three-year buildout timeframe.

Recommendations
Staff recommends that the City Council:

- Adopt Resolution 2007-42 approving a joint powers agreement forming the East Bay Regional Communications System Authority and approving and directing the filing of a "notice of Exemption" pursuant to the California Environmental Quality Act.

- Direct the City Manager to create a new sinking fund titled, "Regional Radio System" with an initial balance, for FY 2007/08 of $100,000.

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

In the Matter of:

APPROVING A JOINT POWERS AGREEMENT FORMING THE EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY AND APPROVING AND DIRECTING THE FILING OF A "NOTICE OF EXEMPTION" PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT	)	**RESOLUTION** 2007-042

WHEREAS, the Lafayette City Council has reviewed the proposed joint powers agreement forming the East Bay Regional Communications System Authority (the "Agreement"); and

WHEREAS, the Lafayette City Council concurs in the recitals of the Agreement; and

WHEREAS, the Lafayette City Council desires to approve the Agreement forming the East Bay Regional Communications System Authority (the "Authority"); and

WHEREAS, the approval of the Agreement has been reviewed in accordance with the provisions of the California Environmental Quality Act (CEQA) and has been found to be categorically exempt pursuant to CEQA Guidelines Section 15320 relating to changes in the organization of local agencies.

NOW, THEREFORE, BE IT RESOLVED by the Lafayette City Council as follows:

1. The Agreement forming the Authority, attached hereto as Exhibit A, is hereby approved and the Lafayette City Manager is hereby authorized to execute it on behalf of the City of Lafayette.

2. The Notice of Exemption pursuant to the CEQA relating to the approval of the Agreement, attached hereto as Exhibit B, is hereby approved. The Lafayette City Manager is hereby authorized to execute the Notice of Exemption on behalf of the City of Lafayette and is directed to file it in accordance with CEQA Guidelines Section 15062.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a regular meeting of said Council on by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Joanne Robbins City Clerk

Carol Federighi, Mayor

JOINT EXERCISE OF POWERS AGREEMENT FOR THE EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY

THIS JOINT EXERCISE OF POWERS AGREEMENT FOR THE EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY (the "Agreement") is entered into as of the _____ day of _____, 2007, by and among the _____

_____

_____

_____

(hereinafter collectively referred to as "Members" and individually as "Member").

RECITALS

A. **WHEREAS,** Chapter 5 of Division 7 of Title 1 of the California Government Code authorizes the Members to enter into an agreement for the joint exercise of any power common to them; and

B. **WHEREAS,** the Members have the common powers, under their respective sovereign and police powers, to acquire real, personal and intangible property and to plan, design, finance, construct, operate, and maintain public safety radio communication systems, facilities and related structures, and appurtenances and incidental improvements thereto; and

C. **WHEREAS,** the Members have determined that the public interest will be served by the joint exercise of these common powers through this Agreement and the creation of a joint powers authority to acquire, plan, design, finance, construct, operate and maintain a P25 compliant or equivalent (as defined herein) communications system serving Alameda and Contra Costa Counties and individual political jurisdictions therein; and

D. **WHEREAS,** the Members have further determined that such an East Bay Regional Communications System Project (the "EBRCS Project"), to which Members and non-members may subscribe (the "Subscribers") subject to the provisions set forth herein, should be undertaken in order to meet public safety communication needs of the Members, and that the EBRCS Project will have regional consequences beyond the Members' geographical jurisdictions, thus encouraging participation by other governmental agencies including but not limited to the State and Federal government.

NOW THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, the Members agree as follows:

AGREEMENT

1. Authority and Purpose. This Agreement is made under the authority of and pursuant to the Joint Exercise of Powers Act, Chapter 5 of Division 7 of Title 1 of the California Government Code (commencing with Section 6500 et seq.) (the "Act"), relative to the joint exercise of powers common to the Members and as otherwise granted by the Act. The purpose of this Agreement is to provide for the acquisition of real, personal and intangible property; and the planning, design, financing, regulation, permitting, environmental evaluation, public outreach, construction, operation, and maintenance of the EBRCS Project, or any identifiable portion of the EBRCS Project. Notwithstanding anything in this Agreement to the contrary, each Member also reserves all of its rights and powers to proceed

separately within its jurisdictional boundaries on any compatible public safety communications projects anticipated to become part of the EBRCS Project; provided, however, that the planning, design, and construction of such projects should be consistent with the Functional Specifications for the EBRCS Project dated _____ (the "Functional Specifications") or as subsequently amended by the Authority's Board of Directors and incorporated herein by this reference.

The general specifications and performance standards for the EBRCS Project are as follows: The EBRCS Project is designed as a P25 digital trunking system operating in the 800Mhz/700Mhz frequency spectrum. The system solution is a wide area, two county, IP-based architecture communications system that is compliant with the ANSI/EIA/TIA-102 suite of standards. The EBRCS Project will utilize sites strategically located throughout, but not limited to, Member jurisdictions. The EBRCS Project is also expected to meet typical public safety requirements of a Grade of Service of two percent busies during the busy hour with an estimated 90 percent of busy calls queued within 2.5 seconds.

For purposes of this Agreement, P25 compliant or equivalent means a common set of standards for first-responders that allows the highest level of interoperable communications in a digital mode.

2. Creation of Authority and Jurisdiction. Pursuant to the Act, the Members hereby create the East Bay Regional Communications System Authority (the "Authority"), a public entity separate and distinct from each of the Members. The jurisdiction of the Authority shall be all territory within the geographic boundaries of the Members, however the Authority may undertake any action outside such geographic boundaries as is necessary and incidental to the accomplishment of its purpose and the EBRCS Project.

3. Term and Termination. This Agreement shall be effective as of the date first above written. It shall remain in effect until the purpose stated in Section 1 of this Agreement is fully accomplished, or until terminated by the vote of a majority of the governing bodies of the Members; provided, however, that this Agreement may not be terminated, and no Member may withdraw its membership, until (a) all bonds or other instruments of indebtedness issued by the Authority and the interest thereon, if any, have been paid in full or provision has been made for payment in full and (b) all outstanding obligations and liabilities of the Authority have been paid in full or provision has been made for payment in full, except as set forth in Section 13.

4. Powers of the Authority.

a. Powers. The Authority shall have all powers necessary or reasonably convenient to carry out the purposes stated in Section 1 of this Agreement, including, but not limited to, the following:

(1) To secure administrative office space and furnishings;

(2) To make and enter into contracts including other joint powers agreements and Subscriber agreements;

(3) To contract for, or employ, administrative, technical, legal and support staff, and consultants and contractors of any kind;

(4) To acquire and maintain insurance of all types;

(5) To lease or sublease real, personal and intangible property;

(6) To acquire, hold, or dispose of real, personal or intangible property by negotiation, dedication or eminent domain provided, however, that the power of eminent domain shall be used to acquire real, personal or intangible property of a Member only with the consent of the governing body of such Member;

(7) To own, lease, sublease, acquire, operate, maintain and dispose of materials, supplies, and equipment of all types including, but not limited to intangible property such as radio frequencies;

(8) To plan, and to conduct environmental evaluation and other analyses in connection therewith, and design buildings, facilities or communications improvements of any kind;

(9) To construct, operate, and maintain buildings, facilities or communications improvements of any kind, provided that (i) for new buildings, facilities or communications improvements located on property owned by a public entity, the Authority shall provide appropriate public notice of proposed action, but shall be exempt from all local land use and zoning regulations; and (ii) for new buildings, facilities or communications improvements located on private property, the Authority shall apply for and receive appropriate approvals under the applicable local land use and zoning regulations;

(10) To accept, hold, invest (pursuant to the Act, including, without limitation, Section 6509.5 thereof), manage, and expend monies;

(11) To obtain and secure funding from any and all available public and private sources including local, state, and federal government, including but not limited to, bond issuances, lease purchase agreements, public grants, public and private contributions, public and private loans, and other funds;

(12) To incur debts, liabilities or obligations, subject to the provisions of this Agreement, provided that no debt, liability, or obligation shall constitute a debt, liability or obligation of the Members, either jointly or severally.

(13) Subject to applicable legal authority, to impose, levy, collect, or cause to be collected, or to receive and use, public safety communication impact or development fees on new residential, commercial, and industrial development;

(14) Subject to applicable legal authority, to form one or more special assessment districts under any legal authority that exists now or in the future, including, without limitation, the Improvement Act of 1911 (Streets & Highways Code Section 5000 et seq.), the Municipal Improvement Act of 1913 (Streets & Highways Code Section

10000 et seq.), the Improvement Bond Act of 1915 (Streets & Highways Code Section 8500 et seq.), and the Marks-Roos Local Bond Pooling Act of 1985 (Government Code Section 6584 et seq.);

(15) Subject to applicable legal authority, to form one or more special tax districts under the Mello-Roos Community Facilities District Act of 1982 (Government Code Section 53311 et seq.) or any other authority that may exist now or in the future;

(16) To negotiate and enter into reimbursement agreements when monies to construct project improvements are advanced;

(17) Subject to applicable legal authority, to cause taxes, assessments, fees or charges to be levied in accordance with applicable State and Federal law, and in a manner to accomplish the purposes of the Authority;

(18) To issue bonds and sell or lease any facilities for purposes of debt financing;

(19) To carry on technical and other investigations of all kinds necessary to further the purposes of the Authority;

(20) To sue and be sued;

(21) To amend the Functional Specifications; and

(22) To exercise all powers incidental to the foregoing including, but not limited to, contracting for services from Members, reimbursing Directors for expenses incurred as permitted by law and adopting personnel rules and regulations.

b. Limitation of Imposition of Powers. The provisions of subsection a. notwithstanding, the Board of Directors shall have no power to impose taxes, assessments, fees or charges within any Member's jurisdiction unless the Member's governing body adopts a resolution approving the tax, assessment, fee or charge.

c. Additional Powers to be Exercised. In addition to those powers common to each of the members, the Authority shall have those powers that may be conferred upon it by subsequently enacted legislation.

d. Restriction on Exercise of Powers. Pursuant to Section 6509 of the Act, the County of Alameda is designated as the Member for determination of the restrictions upon the Members in exercising the powers set forth in this Agreement.

e. Debts, Liabilities and Obligations. The debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, or obligations of the Members, either jointly or severally.

5. Duties. The Authority shall have the duty to do the following within the times specified or, if no time is specified, within a reasonable time:

a. To retain legal counsel for all Authority business, including litigation;

b. To evaluate the need for, and acquire and maintain if necessary, liability, errors and omissions, or other insurance;

c. To conduct an annual audit as required by the provisions of Subsection 6.d(3); and

d. To use its best efforts to develop and adopt within six (6) months of execution of this Agreement: (i) a Capital Plan specifying a means or formula for determining the timing and sequencing of construction of the EBRCS Project consistent with the Functional Specifications referenced in Section 1 of this Agreement and (ii) a funding plan specifying a means or formula for funding the Authority's operations and any EBRCS Project phases that are the responsibility of the Authority (the "Funding Plan"), which Funding Plan will include an allocation of costs among the Members, Subscribers to the EBRCS Project and other funding sources.

e. To administer the EBRCS Project in accordance with the purposes set forth in Section 1.

f. To establish within six (6) months of the execution of this Agreement ad hoc operational and technical committees as necessary to consider and recommend to the Board of Directors system implementation issues.

g. To encourage other governmental and quasi-governmental agencies including but not limited to the State and Federal government, and special districts to participate as Subscribers in the EBRCS Project.

h. To establish system participation pricing including start-up costs, and ongoing Subscriber/Member unit pricing to cover system operations, technical upgrades, and system replacement reserves.

i. To establish policies and procedures for the voluntary transfer and/or lease of assets from Member jurisdictions including but not limited to frequencies, transmitter sites and associated equipment.

j. To enter into agreements with Members, or, in the event that a particular skill or service is unavailable from Members, with outside vendors to perform maintenance of the system.

k. To provide yearly performance review of the EBRCS Project and to report thereon as directed by the Board of Directors.

6. Administration.

a. Governing Board - Membership. The Authority shall be administered by a Board of Directors (the "Board") consisting of twenty-three (23) Directors and their respective alternates. Directors and alternates shall be appointed as follows and, at the time of such

appointment and for the duration of such service, shall be employees or officers of Member agencies:

(1) Alameda County Board of Supervisors
(1) Contra Costa County Board of Supervisors
(1) Alameda County Police Chiefs Association (to be selected by the Association)
(1) Contra Costa County Police Chiefs Association (to be selected by the Association)
(1) Alameda County Fire Chiefs Association (to be selected by the Association)
(1) Contra Costa County Fire Chiefs Association (to be selected by the Association)
(1) Special District (to be selected by the Association)
(1) Alameda County, County Administrator
(1) Contra Costa County, County Administrator
(1) Alameda County Sheriff
(1) Contra Costa County Sheriff
(3) Contra Costa County City Managers (to be selected by the Association)
(3) Alameda County City Managers (to be selected by the Association)
(3) Contra Costa County Elected Officials (to be selected by the Mayor's Conference)
(3) Alameda County Elected Officials (to be selected by the Mayor's Conference)

Alternates shall serve as Directors in the absence of their respective Directors and shall exercise all rights and privileges thereof. Each Director and each alternate for such Director shall serve at the pleasure of the appointing entity and may be removed at any time without notice.

b. Meetings.

(1) Regular Meetings. The Board shall by resolution establish the number of regular meetings to be held each year and the date, hour and location at which such regular meetings shall be held; provided, that the Board shall meet at least once every year.

(2) Special Meetings. Special meetings of the Board may be called in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*).

(3) Conduct of Meetings. All meetings of the Board shall be held in accordance with the Ralph M. Brown Act (Government Code Section 54950 *et seq.*).

(4) Minutes. The Secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director, the Members, and other parties upon request.

(5) Quorum. Twelve (12) Directors of the Board shall constitute a quorum for the transaction of business. Except as provided in Section 7 below, actions of the Board shall require the affirmative vote of a majority of the entire Board (i.e., twelve (12) affirmative votes).

c. Procedures.

(1) The Board shall elect annually a Chair from among its membership to preside at meetings and shall select a Secretary who may, but need not, be a Director. The Board may, from time to time, elect such other officers as the Board shall deem necessary or convenient to conduct the affairs of the Authority.

(2) The Board may adopt by resolution rules of procedure, not inconsistent with the provisions of this Agreement, to govern the conduct of its meetings. Such rules of procedure shall be in accordance with the Ralph M. Brown Act (Government Code Section 54950 *et seq.).*

(3) Directors of the Board and designated officials and employees, if any, shall comply with the Political Reform Act of 1974, Title 9 of the California Government Code (commencing with Section 81000 et seq.).

d. Fiscal Matters.

(1) Treasurer and Auditor.

(A) Except as provided in Subsection (C), below, the treasurer and auditor of _____ County, respectively, are designated the Treasurer and Auditor of the Authority with the powers, duties, and responsibilities specified in the Act, including, without limitation, Sections 6505 and 6505.5 thereof.

(B) The Board shall designate a certified public accountant as the independent auditor of the Authority with the powers, duties, and responsibilities specified in the Act, including, without limitation, Sections 6505 and 6505.5.

(C) Notwithstanding Subsection (A) above, the Board may at any time appoint one or more of the Authority's officers or employees to either or both of the positions of Treasurer or Auditor as provided in the Act.

(2) Custodian of Property. The Treasurer and Auditor of the Authority shall be the public officers who have charge of, handle, and have access to, the Authority's property and shall file with the Authority an official bond in the amount set by the Board.

(3) Accounts and Reports. The Board shall establish and maintain such funds and accounts as may be required by generally accepted public accounting practice. The books and records of the Authority shall be open to inspection at all reasonable times to the Members and their respective representatives. The accounts shall be prepared and maintained by the Treasurer and Auditor of the Authority. The Authority shall, within one hundred twenty (120) days after the close of each fiscal year, cause an independent audit of all financial activities for such fiscal year to be prepared by the independent certified public accountant employed by the Authority in accordance with Government Code Section 6505. The Authority shall promptly deliver copies of the audit report to each member of the Board and the Members.

(4) Budget. The Board shall adopt a budget no later than one hundred twenty (120) days after the first meeting of the Board and no later than June 30th of each year thereafter.

(5) Contributions. Within 90 days of execution of this Agreement, the Board will establish by two-thirds (2/3) vote of the Board the amount of start-up funds to be contributed to the Authority by each Member. Additional contributions shall be specified in the Funding Plan to be adopted by two-thirds (2/3) vote of the Board, in accordance with Section 5.d. and Section 7.a.

(6) Fiscal Year. The fiscal year of the Authority shall be the period from July 1st of each year to and including the following June 30th.

7. Voting. Each member of the Board shall have one vote. The Board may take action by the affirmative vote of the majority of the entire Board. However, the following actions may only be taken with the affirmative vote of at least sixteen (16) Directors.

a. Establish start-up contributions from Members, as referenced in Section 6.d.(5) of this Agreement and adopt a Funding Plan, as referenced in Sections 6.d.(5) and 5.d.;

b. Levy and collect, or cause to be collected, communication impact fees on new residential, commercial, and industrial development, as authorized by local, state, and federal law;

c. Form a special assessment district under any legal authority that exists now or in the future, including, without limitation, the Improvement Act of 1911 (Streets & Highways Code Section 5000 et seq.), the Municipal Improvement Act of 1913 (Streets & Highways Code Section 10000 et seq.), and the Improvement Bond Act of 1915 (Streets & Highways Code Section 8500 et seq.), as authorized by local, state, and federal law;

d. Form a special tax district under the Mello-Roos Community Facilities District Act of 1982 (Government Code Section 53311 et seq.) or any other authority that may exist now or in the future;

e. Cause taxes, assessments, fees or charges to be levied as authorized by local, state, and federal law, and in a manner to accomplish the purposes of the Authority;

f. Issue bonds or other forms of debt; and

g. Exercise the power of eminent domain.

8. Reserved.

9. Indemnification. The Authority shall acquire such insurance protection as is necessary to protect the interest of the Authority and its Members. The Authority shall assume the defense of and indemnify and save harmless the Members and their governing bodies, officers, agents, and employees from all claims, losses, damages, costs, injury, and liability of every kind, nature, and description directly or indirectly arising from the performance of any of the activities of the Authority or the activities undertaken pursuant to this Agreement.

10. Liability of Board, Officers and Employees.

a. The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers, and in the performance of their duties pursuant to this Agreement. They shall not be liable to the Members for any mistake of judgment or other action made, taken, or omitted by them in good faith, nor for any action made, taken, or omitted by any agent, employee, or independent contractor selected with reasonable care, nor for loss incurred through the investment of the Authority's funds, or failure to invest the same.

b. To the extent authorized by California law, no Director, officer, or employee of the Authority shall be responsible for any action made, taken, or omitted, by any other member of the Board, officer, or employee. No member of the Board, officer, or employee of the Authority shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement, except as provided in Subsection 6.d (2).

c. The funds of the Authority shall be used to defend, indemnify, and hold harmless the Authority and Director, officer, or employee of the Authority for actions taken in good faith and within the scope of his or her authority. Nothing herein shall limit the right of the Authority to purchase insurance to provide coverage for the foregoing indemnity.

11. Rules. The Board may adopt, from time to time, such policies, procedures, bylaws, rules and regulations for the conduct of the Authority's affairs as the Board deems necessary and appropriate.

12. Disposition of Property upon Termination. In the event of termination of the Authority pursuant to Section 3 herein and where there will be a successor public entity which will carry on the functions of the Authority and assume its assets and liabilities, the assets of the Authority shall be transferred to the successor public entity. If upon termination pursuant to Section 3, there is no successor public entity which will carry on the functions of the Authority and assume its assets, the assets shall be returned to the Members as follows: (a) all real property and any improvements thereon shall be conveyed to the Member which owned the property prior to the formation of the Authority, and (b) all other assets shall be divided among the Members in proportion to their respective contributions during the term of this Agreement. If upon termination pursuant to Section 3, there is a successor public entity which will carry on some of the functions of the Authority and assume some of the assets, the Authority's Board shall allocate the assets between the successor public entity and the Members.

13. New Parties and Termination and Withdrawal of Existing Parties. The Board shall have plenary authority to establish rules, standards and charges for the admission of new parties to this Agreement and for the termination and withdrawal of existing parties to this Agreement, subject to the provisions set forth in this Agreement. Admission of a new member shall not require amendment to this Agreement. New parties may become members on any conditions prescribed by the Board including payment of special fees and charges. The Board shall further have plenary authority to establish conditions for non-member Subscribers to the EBRCS Project whether such non-member Subscribers are or are not public entities. In the event that a Member seeks to withdraw from the from the Authority prior to issuance of bonds or other instruments of indebtedness, the withdrawing Member shall be charged an amount which shall represent a fair and equitable pro rata share of the costs, expenses and

obligations incurred by the Authority at that time, as determined by the Board.

14. Successors; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Members. No Member may assign any rights or obligations hereunder without the unanimous consent of the governing bodies of the other Members; provided, further, that no such assignment may be made if it would materially and adversely affect (a) the rating of bonds issued by the Authority, or (b) bondholders holding such bonds.

15. Amendments. This Agreement may be amended only by the mutual agreement of all the governing bodies of the Members. So long as any bonds of the Authority are outstanding and unpaid, or funds are not otherwise set aside for the payment or redemption thereof in accordance with the terms of the bonds and the documentation relating thereto, this Agreement shall not be amended, modified or otherwise revised, changed or rescinded, if such action would (a) materially and adversely affect (1) the rating of bonds issued by the Authority, or (2) bondholders holding such bonds, or (b) limit or reduce the obligations of the Members to make, in the aggregate, the payments under the Funding Plan which are for the benefit of the owners of the bonds.

16. Notices. Any notices to Members required by this Agreement shall be delivered or mailed, U.S. first class, postage prepaid, addressed as follows:

Notices under this Agreement shall be deemed given and received at the earlier of actual receipt, or the second business day following deposit in the United States mail, as required above. Any Member may amend its address for notice by notifying the other Members pursuant to this Section.

17. Severability. Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

18. Liberal Construction. The provisions of this Agreement shall be liberally construed as necessary or reasonably convenient to achieve the purposes of the Authority.

19. Headings. The headings used in this Agreement are for convenience only and have no effect on the content, construction, or interpretation of the Agreement.

20. Counterparts. This Agreement may be executed in any number of counterparts, and by

different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

21. Agreement Complete. The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing above. Any such agreements merge into this Agreement.

IN WITNESS WHEREOF, the Members have entered into this Agreement effective on the date first above written.

[signature pages to follow]

942861_5; 1191.002